

REMARKS

This responds to the Office Action dated March 22, 2006, and the references cited therewith.

No claims are amended. Claims 1-17 are now pending in this application.

§102 Rejection of the Claims

Claims 1-3, 6, 10 and 17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Zhu et al. (U.S. 2002/0169480A1). The rejections are traversed and reconsideration is respectfully requested.

Claim 1, and the remaining claims in the case depending therefrom, recites the step of “delivering pacing pulses to the pacing site in a manner which pre-excites the pacing site relative to other areas of the myocardium during a cardiac cycle.” As best understood, the section 102 rejections are premised upon an interpretation of the word “pre-excite” as encompassing the non-excitatory pulses delivered during a refractory period described in the Zhu reference. Applicant does not believe this interpretation is justified. When read in light of the specification, Applicant believes that it is clear that the word “pre-excite” refers to an excitatory pulse that causes contraction of the myocardium, and not to a non-excitatory pulse delivered during a refractory period. Applicant further believes that to interpret the hyphenated word “pre-excite” to refer to non-excitation instead of excitation that precedes other excitation would be inconsistent with how the word would be interpreted in ordinary English usage. In any case, it is clear that one of ordinary skill in the art would, upon reading both the claims and the specification, interpret the claims as referring to pacing pulses that cause contraction of the myocardium and not to non-excitatory pacing pulses. As was held in *Phillips v. AWH Corp.*, No. 03-1269 (Fed. Cir. July 12, 2005), the primary basis for interpreting the words of a claim is the specification. Applicant therefore respectfully requests withdrawal of the rejections on this basis.

Allowable Subject Matter

Claims 4, 5, 7-9 and 11-16 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In view of the remarks above, Applicant respectfully requests withdrawal of the objections.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date 6-22-06

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22311-1450, on this 22 day of April, 2006.

Name

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